

**CITY OF AUSTIN**  
**Board of Adjustment/Sign Review Board**  
**Decision Sheet**

**DATE:** Monday, January 12, 2015

**CASE NUMBER:** C15-2014-0170

☐ Y ☐ Jeff Jack - Chair  
☐ Y ☐ Michael Von Ohlen  
☐ Y ☐ Melissa Whaley Hawthorne - Vice Chair - 2<sup>nd</sup> the Motion  
☐ Y ☐ Sallie Burchett  
☐ Y ☐ Ricardo De Camps - Motion to PP to Feb 9, 2015  
☐ Y ☐ Brian King  
☐ Y ☐ Vincent Harding

**APPLICANT:** Jeffrey S. Howard

**OWNER:** Daughters of Charity Ministries Inc. and St. Andrew's Episcopal School

**ADDRESS:** 32<sup>nd</sup> Street and Wabash

**VARIANCE REQUESTED:** The applicant has requested a variance(s) from Section 25-2-832 (*Private Schools*) (1), of Division 3 – Civic Uses to decrease the minimum paved width of a street that the site must be located on from at least 40 feet from the site to where it connects with another street that has a paved width of at least 40 feet (required) to 22 feet on Wabash Street and from 31 to 36 feet on W. 32<sup>nd</sup> Street (requested) in order to construct a kindergarten facility in a “MF-2-NP”, Multi-Family – Neighborhood Plan zoning district. (Windsor Road)

**BOARD'S DECISION:** POSTPONED TO January 12, 2015 BY APPLICANT

**RENOTIFICATION REQUES:** The applicant has requested a variance(s) from Section 25-2-832 (*Private Schools*) (1), of Division 3 – Civic Uses to decrease the minimum paved width of a street that the site must be located on from at least 40 feet from the site to where it connects with another street that has a paved width of at least 40 feet (required) to 24 feet on Wabash Street, 31.03 and 36.90 feet on W. 32<sup>nd</sup> Street and 27 feet on W. 31<sup>st</sup> (requested) in order to construct a kindergarten facility in a “LO-MU-CO-NP”, Local Office – Mixed Use – Conditional Overlay - Neighborhood Plan and “GR-CO-NP”, Community Commercial – Conditional Overlay – Neighborhood Plan zoning district. (Windsor Road)

Jan 12, 2015 - The public hearing was closed on Board Member Ricardo De Camps motion to Postpone to February 9, 2015, Board Member Melissa Hawthorne second on a 7-0 vote; POSTPONED TO FEBRUARY 9, 2015.

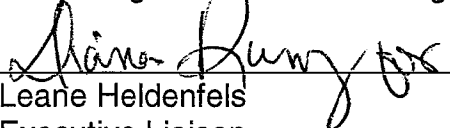
**FINDING:**

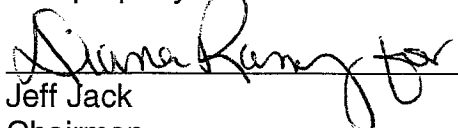
1. The Zoning regulations applicable to the property do not allow for a reasonable use because:

2. (a) The hardship for which the variance is requested is unique to the property in that:

(b) The hardship is not general to the area in which the property is located because:

3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

  
\_\_\_\_\_  
Leane Heldenfels  
Executive Liaison

  
\_\_\_\_\_  
Jeff Jack  
Chairman

## Heldenfels, Leane

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**From:** Kate Clark <~~Clark44@aol.com~~>  
**Sent:** Wednesday, January 28, 2015 8:47 PM  
**To:** Heldenfels, Leane  
**Subject:** Case: C15-2014-0170

To the City of Austin Board of Adjustment, Mr. Jeff Jack, Chairman:

With regard to the above referenced case, the hearing on the property use of 32nd and Wabash Streets will be held on February 9, 2015. St. Andrew's Episcopal School seeks a street width on 32nd Street in order to proceed with construction of a Kindergarten facility.

Our children attended St. Andrew's for grades 1-8 and during those years, we were secure in the knowledge that our children's safety and well-being were paramount. Those values continue to be held at St. Andrew's and the addition of Kindergarten will further enhance the school's mission and program.

We encourage the Board of Adjustment to approve St. Andrew's variance request.

Sincerely,

Kate E. Clark  
Stephen S. Clark, M.D.

Kate E. Clark  
Clark-Curtis  
3306 Bonnie Road  
Austin, TX 78703  
512-478-7127

32<sup>nd</sup> 3<sup>rd</sup> Wabash

**Heldenfels, Leane**

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**From:** Jason Thompkins ~~jasont@thompkins.net~~  
**Sent:** Monday, January 12, 2015 4:29 PM  
**To:** Jeff Howard; Heldenfels, Leane  
**Cc:** Whellan, Michael; 'Sean Murphy' (smurphy@sasaustin.org); Margie Gaudin; Susan Philips (ssphilips@earthlink.net)  
**Subject:** RE: Board of Adjustment Meeting Monday 1/12 at City Hall Council Chambers starting at 5:30

Leane,

Please accept this email as an affirmation of support by the West 31<sup>st</sup> Creekside Neighborhood Association (WCNA) for the variance requested in Case #C15-2014-0170, subject to the terms of the Agreement and Restrictive Covenant as referenced by Mr. Howard. Should you have any questions for me or the WCNA, please don't hesitate to let me know.

Thanks,

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Jason Thompkins  
~~jasont@thompkins.net~~  
(512) 517-3616 - cell

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**From:** Jeff Howard ~~jeff@mcleanhowardlaw.com~~  
**Sent:** Monday, January 12, 2015 9:45 AM  
**To:** Heldenfels, Leane  
**Cc:** Whellan, Michael; Jason Thompkins; 'Sean Murphy' (smurphy@sasaustin.org); Margie Gaudin  
**Subject:** RE: Board of Adjustment Meeting Monday 1/12 at City Hall Council Chambers starting at 5:30

Leane,

I am writing with respect to the St. Andrew's School street pavement width variance on tonight's BOA agenda. I was hoping Jason Thompkins of the West 31<sup>st</sup> Street Creekside Neighborhood Association (WCNA) would be able to send in a letter of support of our variance request. However, I just received a voice mail from him stating he has been out of town and is busy all day today and so he understandably may not get a chance to send in a support letter. However, I have been assured by both Mr. Thomkins (in his voicemail) and the neighborhood's attorney, Michael Whellan that the neighborhood does indeed support the variance request.

In addition, enclosed please find an executed Agreement with the neighborhood concerning land use issues. As you can see, the Agreement is comprehensive and includes reference to the "Variance Application" at issue. In Section 10 of the Agreement, please note that the WCNA and many surrounding neighbors who signed the Agreement, all agreed to support the Variance Application through final approval by the BOA. The Agreement also contemplated that the School would record a restrictive covenant restricting development of the property at 1018 W. 31<sup>st</sup> Street. The School has done so as agreed.

Could you please make sure the enclosed Agreement is provided to the BOA for tonight's meeting. Thank you!

**Jeffrey S. Howard**  
Partner  
[jhoward@mcleanhowardlaw.com](mailto:jhoward@mcleanhowardlaw.com)

C15-2014-0170

**Heldenfels, Leane**

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**From:** Jeff Howard ~~jhoward@mcleanhowardlaw.com~~  
**Sent:** Tuesday, December 30, 2014 11:38 AM  
**To:** Heldenfels, Leane  
**Cc:** Emily Blanco  
**Subject:** RE: Does this notice language look correct?  
**Attachments:** STREET WIDTH EXH.PDF

Leane,

The enclosed shows the pavement width for 32<sup>nd</sup> Street. You can use the Zoning case chart (which shows <sup>24</sup>22 feet for Wabash and 27 feet for 31<sup>st</sup> Street) that we previously sent for the other streets. Thank you and Happy New Year!

**Jeffrey S. Howard**  
Partner  
[jhoward@mcleanhowardlaw.com](mailto:jhoward@mcleanhowardlaw.com)

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**From:** Heldenfels, Leane [<mailto:Leane.Heldenfels@austintexas.gov>]  
**Sent:** Thursday, December 18, 2014 2:56 PM  
**To:** Jeff Howard  
**Subject:** RE: Does this notice language look correct?

Great – can you provide a site plan or drawing that shows those pavement widths by end of day 12/31 so I can include it in the Board's advance packet, I got the ones I included from a chart Emily sent that I think was part of the rezoning case.

Thanks –  
Leane

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**From:** Jeff Howard ~~jhoward@mcleanhowardlaw.com~~  
**Sent:** Tuesday, December 16, 2014 4:40 PM  
**To:** Heldenfels, Leane  
**Cc:** Emily Blanco  
**Subject:** RE: Does this notice language look correct?

Leane,



Bldg. Opt In/Opt Out Process			
C14-00-2075; Wabash Parking Lot Improvements - West 32 <sup>nd</sup> Street at Wabash Avenue	GO-CO to GR-CO	To grant GR with a parking lot as the only permitted GR use and all permitted LO uses intact (05/09/2000)	Approved GR-CO zoning, with the CO deleting prohibition of private primary and secondary education facilities (06/01/2000).
C14-98-0256; Wabash Parking Lot Improvements, 1019 West 32 <sup>nd</sup> Street	SF-3, MF-2 to GO-CO	To grant GO-CO w/conditions (08/24/1999).	Approved GO-CO w/conditions; 40ft height restriction, and a list of prohibited GO uses (09/30/1999).

#### **RELATED CASES:**

The subject property includes a 3,137sq. ft. piece of land that is not part of the zoning change requested in this application. This piece of the property was originally zoned SF-3 and was rezoned to GO-CO in 1999 and then from GO-CO to GR-CO to allow for primary and secondary educational facilities in 2000 (C14-98-0256 and C14-00-2075).

The subject property is within the boundaries of the Central West Austin Neighborhood Planning Area (NP-2010-0027, Ord. No. 20100923-102). The -NP combining district was appended to the existing MF-2 base district in 2010 (C14-2010-0051, Ord. No. 20100923-103).

There is a corresponding neighborhood plan amendment case (NPA-2014-0027.02) to change the land use designation on the Future Land Use Map (FLUM) from Multifamily to Mixed Use/Office.

#### **ABUTTING STREETS:**

Name	ROW	Pavement	Classification	Sidewalks	Bike Route	Capital Metro (within ¼ mile)
W. 31 <sup>st</sup> St.	55'	27'	Local	Yes	Yes	Yes
Wabash	25'	24'	Local	Yes	No	Yes

According to the Austin 2009 Bicycle Plan Update approved by Austin City Council in June, 2009, a bicycle facility is not identified on Wabash Street.

## Heldenfels, Leane

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**From:** Jeff Howard ~~jhoward@mcleanhowardlaw.com~~  
**Sent:** Tuesday, December 30, 2014 11:33 AM  
**To:** Heldenfels, Leane; Emily Blanco  
**Subject:** RE: BOA Variance Application Case C15-2014-0170

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Just the four parcels marked in red. The large tract west of Wabash is not part of the application. Thanks.

### Jeffrey S. Howard

Partner  
[jhoward@mcleanhowardlaw.com](mailto:jhoward@mcleanhowardlaw.com)

Barton Oaks Plaza, Building II  
901 South MoPac Expy | Ste 225  
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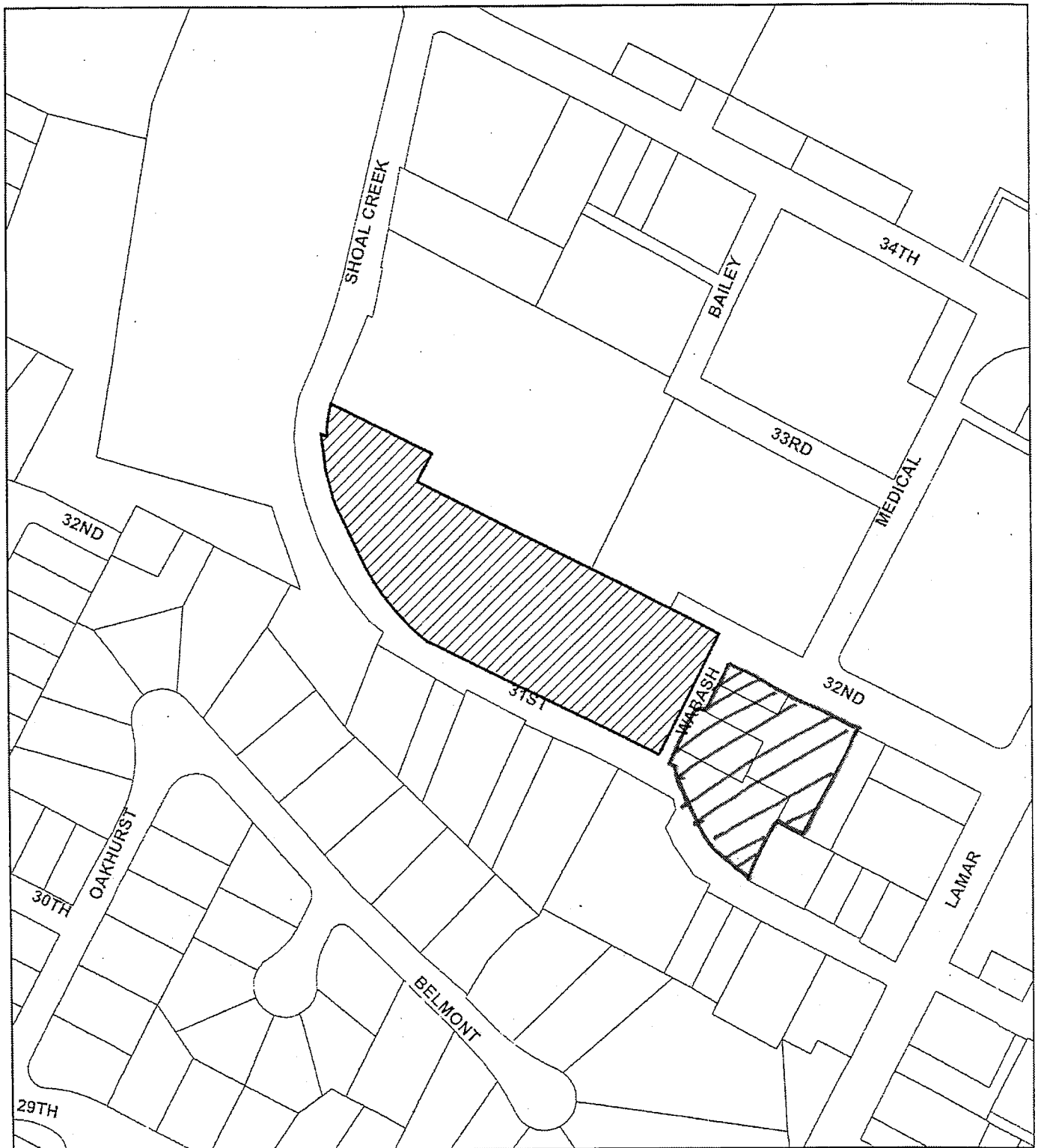
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

**From:** Heldenfels, Leane [<mailto:Leane.Heldenfels@austintexas.gov>]  
**Sent:** Monday, December 22, 2014 2:55 PM  
**To:** Emily Blanco  
**Cc:** Jeff Howard  
**Subject:** FW: BOA Variance Application Case C15-2014-0170

Emily – our map person for notices was wondering if you wanted large parcel to the west/left of Wabash included in notice as well, or just the 4 parcels you marked in red to the east/right of Wabash. She wasn't clear from the drawing because the larger, existing campus parcel wasn't marked out so she thought you wanted it all shown, I was thinking just the red marked are.

Sorry this one has had so much confusion –  
Leane





- N
- 1" = 200'
-  SUBJECT TRACT
  -  PENDING CASE
  -  ZONING BOUNDARY

CASE#: C15-2014-0170  
Address: 1112 W 31ST STREET



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by CTM for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

## Heldenfels, Leane

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**From:** Emily Blanco <[REDACTED]>  
**Sent:** Monday, December 15, 2014 2:35 PM  
**To:** Heldenfels, Leane  
**Subject:** RE: BOA Variance Application Case C15-2014-0170  
**Attachments:** BOA Variance Exhibit A.docx

According to Austin GIS, the addresses appear to be: 1018 W. 31<sup>st</sup> Street, 1011 W. 32<sup>nd</sup> Street and 1019 W. 32<sup>nd</sup> Street. See attached Exhibit A for Lot/Blocks.

I am working on the site plan that shows paved widths of all the streets. You said in the last email to use the attached updated first page to resubmit, but nothing came through—do you mind sending that?

### Emily Blanco

Legal Secretary  
[REDACTED]

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512.328.2409 fax  
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**From:** Heldenfels, Leane [mailto:Leane.Heldenfels@austintexas.gov]  
**Sent:** Wednesday, December 10, 2014 10:45 AM  
**To:** Emily Blanco  
**Subject:** RE: BOA Variance Application Case C15-2014-0170

Can you provide me the legal addresses/subdivision lot and blocks and address you'd like the case to be noticed as. I've added the 4 parcels to our case so I think the map, labels will be correct this time but just want to make sure the description is correct, too – I'll have you/Jeff review before they get mailed this time. If you want to send an updated 1<sup>st</sup> page for the application (you can use attached) and site plan that shows paved widths of all the streets the tracts front to and intersect with that would be helpful, too, so the body of the notice is accurate as well – hate for it to get postponed again if we can avoid it.

Thanks –  
Leane

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**From:** Emily Blanco [mailto:[REDACTED]]  
**Sent:** Tuesday, December 02, 2014 10:42 AM  
**To:** Heldenfels, Leane  
**Subject:** RE: BOA Variance Application Case C15-2014-0170



## Heldenfels, Leane

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**From:** susan philips <~~sphilips@earthlink.net~~>  
**Sent:** Monday, January 12, 2015 11:34 AM  
**To:** Heldenfels, Leane  
**Cc:** jason@jthompkins.net; jeff howard  
**Subject:** Case # C15-2014-0170 32nd & Wabash

Ms. Heldenfels -

I am writing to affirm my support of the variance requested in Case #C15-2014-0170, subject to the terms of the Agreement Regarding Rezoning of 1018 W 31st Street, Austin, Texas signed by the Applicant, the WCNA and myself, among others. It is my understanding that Mr. Howard has already provided a copy of the Agreement to the Board of Adjustment.

Please let me know if you need any additional information from me. Thanks.

Susan Philips

C15-2014-0170  
32nd  $\frac{3}{4}$  Wabash

**AGREEMENT REGARDING REZONING OF 1018 W. 31<sup>ST</sup> STREET  
AUSTIN, TEXAS**

This Agreement Regarding Rezoning of 1018 W. 31<sup>st</sup> Street, Austin, Texas (this "**Agreement**") is made and entered into on this the 14<sup>th</sup> of December, 2014 by and between St. Andrew's Episcopal School (the "**School**") and the West 31<sup>st</sup> Street Creekside Neighborhood Association (the "**WCNA**") and individual owners and residents executing this Agreement (the "**Neighbors**") of property located near the property locally known as 1018 W. 31<sup>st</sup> Street, Austin, Texas (the "**Property**"). The WCNA and the Neighbors are collectively referred to herein as the "**Neighborhood**".

**RECITALS**

WHEREAS, the Property is more particularly described as Lot 1-A, Amended Plat of Lots 1 and 2, Block 1, Martha E. Whitten Addition and Lot 1, Seton Medical Center Addition No. 4, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Plat Book 95, Page 344 of the Plat Records of Travis County, Texas and is located across Wabash Street from the School's current lower school and middle school campus, and the School has entered into a contract with the Daughters of Charity to acquire the Property for school use;

WHEREAS, in order to complete the sale of the Property to the School, the Daughters of Charity have applied with the City of Austin the ("**City**") for (i) an amendment to the Future Land Use Map associated with the current neighborhood plan covering the Property from "Multi-family" to "Office/ Mixed Use" in City File No. NPA-2014-0027 (the "**NPA Application**"), (ii) a re-zoning of the Property from "MF-2" to "LO-MU-CO" as set forth in City File No. C14-2014-0145 (the "**Rezoning Application**"), and (iii) a variance with the City Board of Adjustment from the requirements of Section 25-2-832 of City Code (the "**Variance Application**"). The NPA Application, the Rezoning Application and the Variance Application are collectively referred to herein as the "**Applications**";

WHEREAS, the School has been appointed by the Daughters of Charity as agent with respect to the Applications, and, as the proposed future owner of the Property, is willing to make certain agreements with respect to the Applications, the School and the Property as set forth herein; and

Whereas, the undersigned Neighbors and the Neighborhood agree to withdraw any previously filed opposition to the Applications subject to the terms set forth herein. Individual retractions will be emailed to Maureen Meredith (Planning Department), Tori Haase (Zoning Department) and the CWAN-CT. Further, the Neighborhood desires to support the Applications subject to the terms of this Agreement.

**AGREEMENT**

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the School and the Neighborhood hereby agree as follows:

1. The School agrees that the zoning ordinance approved in connection with the Rezoning Application will contain a conditional overlay stating that any uses allowed by the City with the "MU" combining district (but not allowed in the "LO" base district) will be restricted to those uses allowed in

the "MF-1" base district, except for those MF-1 uses listed hereafter which shall be prohibited to the extent the City allows such prohibition under applicable law: 1. Communication services facilities; 2. Any daycare services; 3. Any telecommunication towers; 4. Any group homes; and 5. Any public educational facilities.

2. The School agrees that the zoning ordinance approved in connection with the Rezoning Application will contain a conditional overlay stating that any future use allowed in the "MU" combining district (but not allowed in the "LO" base district) will be restricted to the City's site development regulations applicable to the "MF-1" base district. In addition, the School agrees to enter into a private restrictive covenant for the benefit of the WCNA and Neighbors in the form attached as Exhibit A to this Agreement (the "**Restrictive Covenant**") that provides a minimum twenty-five (25) foot setback from the adjacent property at 1014 W. 31<sup>st</sup> Street for any new structures and maintains the current setback, which is approximately twelve (12) feet, from the adjacent property at 1014 W. 31<sup>st</sup> Street for any current structures. The foregoing setback restrictions shall not apply to any new structure that fully encloses as conditioned space the existing small, narrow courtyard located between the north wing and the south wing of the building that currently exists on the Property. Notwithstanding anything to the contrary, compatibility standards set forth in the City's Code remain applicable and nothing in this Agreement or the Restrictive Covenant shall be deemed to have modified the compatibility standards of the City Code.

3. The School agrees that the zoning ordinance approved in connection with the Rezoning Application will contain a conditional overlay stating that any uses allowed in the "LO" base district shall be restricted to Administrative and Business Office and Private Primary Educational Facilities use, and all other "LO" allowed uses shall be prohibited. The School agrees that the Restrictive Covenant will also restrict the Property to provide that any Administrative and Business Office must be associated with a Private Primary and Secondary Educational Facilities use on the Property or other property owned or occupied by the School.

4. Except for (i) temporary access as may be reasonably necessary during any construction on the Property, and (ii) parking for School staff (but not for any drop-off or pick-up) along W. 31<sup>st</sup> ("Staff Parking"), the School agrees that access to the Property from West 31<sup>st</sup> Street shall be prohibited as long as the Property is owned and occupied by the School and that such prohibition shall be set forth in (i) a conditional overlay in the zoning ordinance approved in connection with the Rezoning Application to the extent allowed by the City, and (ii) the Restrictive Covenant; provided that, the Restrictive Covenant will provide that if the Property is ever transferred by the School separate from the School's property to the north, such prohibition shall not apply if the Property is rezoned to MF-1, or a zoning district with the same or more restrictive site development regulations as set forth in the City Code as of November 20, 2014. The Staff Parking along W. 31<sup>st</sup> Street shall be limited to no more than 3 parking spaces and shall be located generally where the existing W. 31<sup>st</sup> Street driveway and parking for the Property is located, except that no Staff Parking will be allowed within 12 feet of the western property line of 1014 W. 31<sup>st</sup> Street and the current driveway will not be used as a driveway to access the back or side of the Property. In the event that the City does not allow the use of the area where the existing W. 31<sup>st</sup> Street driveway and parking for the Property is located for the Staff Parking as provided herein, the Neighborhood agrees not to oppose any variance or waiver required by the City to allow the use of the area for such Staff Parking.

5. The School agrees that the zoning ordinance approved in connection with the Rezoning Application will contain a conditional overlay stating that with respect to any use allowed in the "LO"

base zoning district, such use shall be restricted to two (2) stories or 30' in height. The School agrees that the Restrictive Covenant will provide that any windows located on the south side of any second story of any building used for School purposes on the Property will be located above eye level so that the second story windows allow light but not views except to the sky.

6. By December 15, 2014, the School agrees to provide the Neighborhood with a tree survey according to City standards for both the Property and the adjacent parking lot property owned by the School. The School agrees to use reasonable, good faith efforts to remove bamboo that is currently on the Property and the lot to the North of the Property, without the use of chemical treatment.

7. Notwithstanding anything to be contained in the zoning ordinance described above, the School agrees that the Restrictive Covenant will be executed by the owner of the Property prior to third reading of the zoning ordinance for the Property and the executed Restrictive Covenant will be delivered to the Neighborhood; ten (10) days after passage of the zoning ordinance on third reading, the Neighborhood may record the Restrictive Covenant. The Restrictive Covenant will, in addition to the items described above, provide, at the WCNA's election, that in the event of any sale, assignment, lease, contribution or transfer of the Property, the School and subsequent owner of the Property will not oppose any "rollback" of the zoning of the Property to a MF-1 designation; the Restrictive Covenant will appoint the WCNA as the agent for the School or such subsequent owner of the Property for processing a rezoning of the Property in the event of any sale, assignment, lease, contribution or transfer of the Property by the School. In addition, the Restrictive Covenant will further provide that, to the extent the access prohibition provided in Paragraph 4 is included in the zoning ordinance as a conditional overlay and in the event of any such transfer of the Property by the School, the Neighborhood would not oppose a re-zoning of the Property to MF-1, or a zoning district with the same or more restrictive site development regulations as set forth in the City Code as of November 20, 2014, in order to remove such restriction from the conditional overlay. The foregoing restrictions in the event of transfer shall not apply to any transfer in connection with any security given to any lender pursuant to any mortgage or the foreclosure thereof so long as the use of the Property for school purposes continues, to any easement or license in connection with the use or development of the Property for school purposes, or to any transfer to an affiliate of the School or successor entity that uses the Property for school purposes.

8. The School agrees to take the following steps with respect to the current traffic issues on W. 31<sup>st</sup> Street:

i. The School agrees that it supports the establishment of School Zones on W. 31st Street, W. 32nd Street, W. 33<sup>rd</sup>, Wabash, and Medical Parkway, and agrees to participate in meetings with and in appropriate written applications to the Austin Transportation Department no later than April 15, 2015. If the City requires reimbursement for the reasonable cost of the signs associated with the establishment of these School Zones, and such cost are \$20,000 or less, the School will be responsible for those costs. If the total cost exceeds \$20,000, the School may, but shall not be obligated to, agree to cover the cost above \$20,000.

ii. The School agrees that it will support Neighborhood efforts to improve signage for the Bike Lane situated along the southern boundary of W. 31st Street. If the City requires reimbursement for the reasonable cost of the signs associated with the improved signage for the Bike Lane, and such costs are \$6,000 or less, the School and Neighborhood will split the cost of such signs or improvements 50-50; however, the

Neighborhood's cost shall not exceed \$2,000 and if the total cost is greater than \$4,000, the School will be responsible for the overage, but the School's cost shall not exceed \$4,000. If the total cost exceeds \$6,000, the School and Neighborhood may agree to split the cost above \$6,000.

iii. The School agrees to provide written support for the Neighborhood's request to the City, seeking immediate attention to cut back the overgrowth of the Bike Lane at W. 31st Street and Shoal Creek. The Neighborhood will provide contact information for the School to send such written request.

iv. Any pick-up or drop-off associated with classes held at the Property, including, but not limited to Kindergarten, will not occur on, or from, 31<sup>st</sup> Street or Wabash Ave.; instead, the drop-off and pick-up associated with classes held at the Property shall be done on the North side of the property from the adjacent property, which is currently a parking lot. This restriction set forth in this subparagraph will also be set forth in the Restrictive Covenant.

v. The School agrees that crosswalks are desirable at Lamar and W. 31<sup>st</sup> Street, Wabash and W. 31<sup>st</sup> Street and in front of the school across from the Hike and Bike trail where W. 31st St and Shoal Creek Blvd meet. The School supports the Neighborhoods efforts to request from, and work with, the City to implement crosswalks at the locations described in the immediately preceding sentence and, if the City should request reimbursement for reasonable costs associated with the crosswalk improvements, and such costs are \$6,000 or less, the School and Neighborhood will split such costs 50-50; however, the Neighborhood's cost shall not exceed \$2,000 and if the total cost is greater than \$4,000, the School will be responsible for the overage, but the School's cost shall not exceed \$4,000. If the total cost exceeds \$6,000, the School and Neighborhood may agree to split the cost above \$6,000.

vi. By March 15, 2015, the School agrees to send a letter to City Traffic Engineer in Transportation Department to request help in evaluating the current school traffic and the anticipated changes in traffic that may result from use of the Property for school purposes.

vii. By April 15, 2015, the School agrees to perform a traffic study by a qualified traffic engineer (the "Traffic Study"), at its sole cost, to (a) evaluate the current school traffic and circulation together with any anticipated changes in traffic and circulation that may result from the use of the Property for school purposes, (b) evaluate the efficiency of current and proposed drop-off and pick-up areas and procedures for both the existing school campus and the Property, and (c) make any recommendations that do not materially and adversely affect school operations with respect to area roadways, traffic circulation, and drop-off and pick-up in order to materially improve traffic and safety on W. 31st Street other streets during school drop-off and pick-up times. The School will allow the Neighborhood to participate (by the sharing of information and attendance at meetings) in the development and consideration of the Traffic Study.

Furthermore, the School agrees to allow the Neighborhood to reasonably and meaningfully participate (by the reasonable sharing of information and the reasonable attendance at meetings with the City and with the School's consultants) in the consideration of future traffic circulation issues by the School in connection with (i) the School's upcoming master planning efforts planned for 2015 and 2016, and (ii) at any subsequent consideration of a traffic study by the School concerning traffic circulation. The School agrees to provide the Neighborhood a copy of any traffic study it receives, including, but not limited to,



the Traffic Study and any traffic study that is prepared in connection with master planning efforts. In addition, the School and the Neighborhood agree to reasonably cooperate in connection with any future discussions with the City on any mutually beneficial changes to traffic conditions on W. 31st Street.

9. Noise Mitigation

a. Playground Equipment and Playground Area

The School agrees that any playground equipment on the Property will be at least 85 feet away from the shared property line between the Property and 1014 W. 31st Street, and the current wall/ fence along W. 31st Street and the Eastern end of the Property shall remain in place or, if it is demolished, the School shall build and maintain a new, solid, six foot (6') fence or wall along W. 31st Street and the Western end of the Staff Parking area. The term "playground" as used herein shall mean and refer to an area improved with play structures and large play equipment that is typically and commonly identified as a playground, but shall exclude any other area on the Property where students may play or be engaged in outdoor activities, with the exception of the area located within 60 feet of the western property line of 1014 W. 31st Street in which outdoor educational or play activities shall be prohibited.

b. Mechanical Equipment

The School also agrees that any additional mechanical equipment, including, but not limited to air conditioning equipment, on the Property will be more than 25 feet away from the shared property line between the Property and 1014 W. 31st Street and will be screened. The School agrees that any outside lighting on the Property that is less than 50 feet away from the shared property line between the Property and 1014 W. 31st Street (i) will be hooded and facing down (ii) will produce less than 1 foot candle at any location within such 25 foot area, and (iii) will only be used to the extent such use is appropriate for security purposes.

c. Sound wall

Prior to using the Property as an educational facility, the School shall build and maintain a wall/ fence in the form of a six (6) foot wall/ fence between north property line of 1014 W. 31st Street and the lot to the North of the Property constructed of cement, stone or material reasonably acceptable to the adjacent Neighbors.

d. Noise mitigation measures

Further, the School agrees to seek and reasonably consider input from those Neighbors that also own property adjacent to, or across from, the Property on the potential for additional landscaping or other noise mitigation measures.

The restrictions set forth in this paragraph will also be set forth in the Restrictive Covenant.

10. The WCNA, Neighbors and the Neighborhood, subject to the terms of this Agreement, agree to support the Applications through final approval by the Austin City Council and Austin Board of Adjustments. Without limiting the generality of the foregoing, the WCNA, Neighbors and Neighborhood, hereby agree that they will deliver written correspondence to the City affirming such

support, and that they will not oppose, contest, object to, protest against, campaign against, hinder or delay the Applications consistent with this Agreement.

11. The following miscellaneous provisions shall apply to this Agreement.

a. Entire Agreement. Each party hereto warrants that this Agreement has been executed without reliance of any representation of any kind or character not expressly set forth herein, that this Agreement and the Restrictive Covenant embodies the entire agreement and that no other agreements, representations or modifications exist, and this Agreement cannot be modified except in writing signed by all parties.

b. Applicable Law. This Agreement shall be construed in accordance with the applicable laws of the State of Texas and the United States and venue for any dispute hereunder shall be in a court of appropriate jurisdiction in Travis County, Texas.

c. Recitals Incorporated. The recitals set forth on page 1 above are hereby incorporated herein for all purposes.

d. Severability. The provisions of this Agreement are severable, such that if any provision is held invalid, then the remainder of the Agreement shall be enforced.

e. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto, their heirs, executors, administrators, officers, directors, partners, shareholders, employees, members, managers, agents, representatives, attorneys, successors and/or assigns.

f. Authority to Execute. Each person signing this Agreement below represents and warrants that he or she has the full authority to sign this Agreement on behalf of the party he or she represents, and this his or her signature below will bind such party to this Agreement.

g. Counterparts / Faxed Signature. This Agreement may be executed in multiple counterparts, all of which shall constitute a single agreement, and this Agreement contains the entire agreement of the parties. A faxed signature shall constitute an original for purposes of execution of this Agreement.

h. Default. In the event of any default by any party hereto, prior to the exercise of any remedies for such default, the non-defaulting party shall provide written notice to the defaulting party and the defaulting party shall have thirty (30) days in which to cure such default; provided that, however, if such cure cannot be reasonably completed within such 30-day period, the defaulting party may commence its cure within the 30-day period and must thereafter diligently pursue such cure to completion.

WE, THE UNDERSIGNED, HEREBY ACKNOWLEDGE THAT WE HAVE READ, HAD FULLY EXPLAINED TO US AND COMPLETELY UNDERSTAND THE FOREGOING AGREEMENT AND ALL PROVISIONS THEREOF. IT IS EXPRESSLY UNDERSTOOD BY ALL PARTIES THAT THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF ANY PARTY HERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS OR UNDERSTANDINGS BETWEEN THE PARTIES.

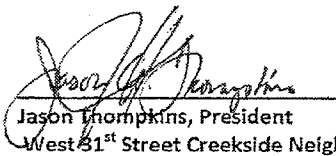
AGREED TO AND ACCEPTED:

ST. ANDREW'S EPISCOPAL SCHOOL

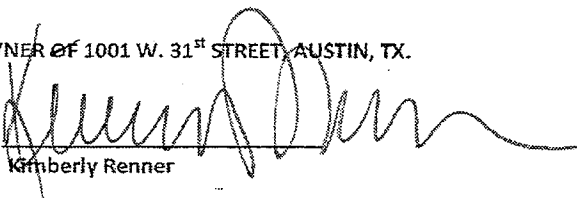
By:   
John C. Murphy, Head of School

By:   
Margaret Gaudin, Board Chair

WEST 31ST STREET CREEKSIDE NEIGHBORHOOD ASSOCIATION

By:   
Jason Thompkins, President  
West 31<sup>st</sup> Street Creekside Neighborhood Association

OWNER OF 1001 W. 31<sup>st</sup> STREET, AUSTIN, TX.

By:   
Kimberly Renner

OWNER OF 1004, 1006 and 1014 W. 31<sup>st</sup> STREET, AUSTIN, TX.

By: Philips 31<sup>st</sup> Street Investments, LLC

By:   
Susan Phillips, Member MANAGER

SAP

OWNER OF 1011 W. 31<sup>st</sup> STREET, AUSTIN, TX.

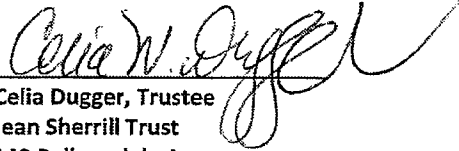
By: Philips Merlin Building, LLC

By:   
Susan Philips, Member ~~MANAGER~~

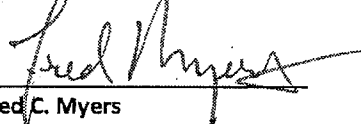
SSP

OWNER OF 1017 W. 31<sup>st</sup> STREET, AUSTIN, TX.

By: Jean W. D. M. Sherrill Trust

By:   
Celia Dugger, Trustee  
Jean Sherrill Trust  
149 Pelhamdale Ave.  
Pelham, NY 10803

OWNER OF 1101 W. 31<sup>st</sup> STREET, AUSTIN, TX.

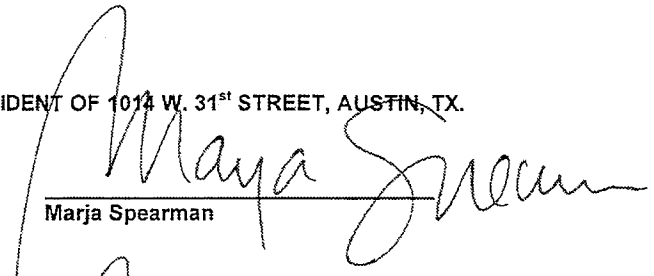
By:   
Fred C. Myers

OWNER OF 1111 W. 31<sup>st</sup> STREET, AUSTIN, TX.

By:   
Jason Thompson

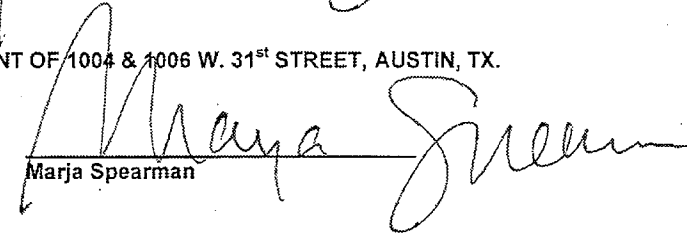
RESIDENT OF 1014 W. 31<sup>ST</sup> STREET, AUSTIN, TX.

By:

  
Marja Spearman

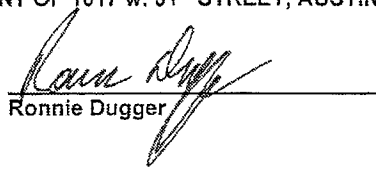
TENANT OF 1004 & 1006 W. 31<sup>ST</sup> STREET, AUSTIN, TX.

By:

  
Marja Spearman

RESIDENT OF 1017 W. 31<sup>ST</sup> STREET, AUSTIN, TX.

By:

  
Ronnie Dugger

## RESTRICTIVE COVENANT

This Restrictive Covenant (this "Restrictive Covenant") is made to be effective the date set forth below (the "Effective Date") by DAUGHTERS OF CHARITY MINISTRIES, INC. (f/k/a Daughters of Charity Ministries) a Missouri nonprofit corporation ("Owner"). It is the express intent of Owner that this Restrictive Covenant shall run with the land more particularly described herein as the "Property", is for the benefit of the W. 31st Creekside Neighborhood Association ("WCNA") and the undersigned owners of the properties locally known as 1001 W. 31<sup>st</sup> St., 1004 W. 31<sup>st</sup> St., 1006 W. 31<sup>st</sup> St., 1011 W. 31<sup>st</sup> St., 1014 W. 31<sup>st</sup> St., 1017 W. 31<sup>st</sup> St., 1101 W. 31<sup>st</sup> St., and 1111 W. 31<sup>st</sup> St., and more particularly described herein as the "Benefitted Properties" (such owners hereinafter, collectively the "Neighbors") and its successor organizations, and their successor owners and is enforceable by WCNA or the Neighbors and their successor owners of the Benefitted Properties.

### RECITALS:

A. Owner is the owner of Lot 1-A, AMENDED PLAT OF LOTS 1 AND 2, BLOCK 1, MARTHA E. WHITTEN ADDITION AND LOT 1, SETON MEDICAL CENTER ADDITION NO. FOUR, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 95, Page 344, Plat Records of Travis County, Texas. (the "Property");

B. Owner has applied with the City of Austin the ("City") for (i) an amendment to the Future Land Use Map associated with the current neighborhood plan covering the Property from "Multi-family" to "Office/ Mixed Use" in City File No. NPA-2014-0027 (the "NPA Application"), and (ii) a re-zoning of the Property from "MF-2" to "LO-MU-CO" as set forth in City File No. C14-2014-0145 (the "Rezoning Application"). The NPA Application and the Rezoning Application are collectively referred to herein as the "Applications";

C. The Neighbors own the property more particularly described on "Exhibit A" (the "Benefitted Properties").

D. Owner has sought the support of the WCNA and the Neighbors for the Applications and a variance application from 25-2-832 before the City Board of Adjustment;

E. Owner has agreed to impose upon the Property these covenants and conditions for the mutual benefit of the Property, Owner, WCNA, and the Neighbors;

F. In reliance upon Owner's Restrictive Covenant to impose these covenants and conditions, WCNA and the Neighbors have agreed to not object to the Applications and a variance application from 25-2-832 before the City Board of Adjustment.

NOW, THEREFORE, for the consideration set forth in Paragraphs D and E above, the receipt and sufficiency of which is hereby acknowledged, Owner does hereby impose the following obligations, restrictions and covenants upon the Property (collectively, the "Restrictions"), which shall be binding upon Owner and all subsequent owners of the Property,



or any portion thereof. Owner further declares that the Property shall be held, sold and conveyed, subject to the following:

**Covenants:**

1. The following uses as defined in the City of Austin City Code ("City Code") on November 20, 2014 are prohibited on the Property: any Telecommunication Towers; any Family Home, and any Group Homes. In addition, any Administrative and Business Office use must be associated with a Private Primary or Secondary Educational Facility.
2. St. Andrew's Episcopal School or any entity that it has an interest in (the "School") shall maintain a minimum twenty-five (25) foot setback from the adjacent property at 1014 W. 31st Street for any new structures. The School shall maintain the setback, which is approximately twelve (12) feet, from the adjacent property at 1014 W. 31st Street for any current structures. Notwithstanding the foregoing, the foregoing setback restrictions shall not apply to any new structure that fully encloses as conditioned space the existing small, narrow courtyard located between the north wing and the south wing of the building that currently exists on the Property; so long as any new structure that fully encloses as conditioned space the existing small, narrow courtyard located between the north wing and the south wing of the building that currently exists on the Property is at least twelve (12) feet from the adjacent property at 1014 W. 31<sup>st</sup> Street.
3. Except for (i) temporary access as may be reasonably necessary during any construction on the Property, and (ii) parking for School staff (but not for any drop-off or pick-up) along W. 31st ("Staff Parking"), the School agrees that access to the Property from West 31st Street shall be prohibited as long as the Property is owned and occupied by the School and that such prohibition will be set forth in a conditional overlay in the zoning ordinance approved in connection with the Rezoning Application to the extent allowed by the City of Austin; provided that, if the Property is ever transferred by the School separate from the School's property to the north, such access prohibition contained in this paragraph shall not apply if the Property is rezoned to Multifamily Residence Limited Density (MF-1), or a zoning district with the same or more restrictive site development regulations as set forth in the City Code as of November 20, 2014. The Staff Parking on the Property accessed from W. 31st Street shall be limited to no more than 3 parking spaces and shall be located generally where the existing W. 31st Street driveway and parking for the Property are located, except that no Staff Parking will be allowed within twelve (12) feet of the western property line of 1014 W. 31st Street and the current driveway off of W. 31<sup>st</sup> Street will not be used as a driveway to access the Property.
4. Any pick-up or drop-off associated with classes held at the Property, including, but not limited to Kindergarten, will not occur on, or from, 31st Street or Wabash Ave.; instead, the drop-off and pick-up associated with classes held at the

Property shall occur along the North side of the Property from the adjacent property with access from W. 32<sup>nd</sup> Street, which is currently a parking lot.

5. The School agrees that any windows located on the south side of any second story of any building used for school purposes on the Property will be located above eye level so that the second story windows allow light but not views, except to the sky.
6. In the event of any sale, assignment, lease, contribution or transfer of the Property by the School (any of which is referred to herein as a "Transfer"), the School and any subsequent owner of the Property will not oppose any rollback of the zoning of the Property to an MF-1 base zoning designation, or equivalent zoning district (if the MF-1 zoning district no longer exists at the time of such rollback) with the same site development regulations as set forth in the City Code as of November 20, 2014; and, further, the School and any subsequent owner of the Property hereby appoints the WCNA and the Neighbors as the agent for processing a rezoning of the Property in the event of Transfer by the School. The School and any subsequent owner of the Property will not oppose any rollback of the zoning of the Property to an MF-1 base zoning designation, or equivalent zoning district (if the MF-1 zoning district no longer exists at the time of such rollback) with the same or similar site development regulations as set forth in the City Code as of November 20, 2014. The foregoing restrictions and provisions in the event of a Transfer by the School shall not apply to any Transfer in connection with any security given to any lender pursuant to any mortgage or the foreclosure thereof so long as the use of the Property for school purposes continues, to any easement or license in connection with the use or development of the Property for school purposes, or to any transfer to an affiliate of the School or successor entity that uses the Property for school purposes.
7. To the extent the access prohibition provided in Paragraph 3 is included in the zoning ordinance as a conditional overlay and in the event of any Transfer of the Property by the School, the WCNA and the Neighbors will not oppose a re-zoning of the Property to MF-1 or a zoning district with the same or more restrictive site development regulations as set forth in the City Code as of November 20, 2014 in order to remove the conditional overlay restriction for access to the Property from W. 31<sup>st</sup> Street as set forth in Paragraph 3 above and in the zoning ordinance.
8. The School agrees that any playground equipment on the Property will be at least 85 feet away from the shared property line between the Property and 1014 W. 31st Street, and the current wall/ fence along W. 31st Street and the Eastern end of the Property shall remain in place or, if it is demolished, the School shall build and maintain a new, solid, six foot (6') fence or wall along W. 31st Street and the Western end of the Staff Parking area. The term "playground" as used herein shall mean and refer to an area improved with play structures and large play equipment that is typically and commonly identified as a playground, but shall exclude any other area on the Property where students may play or be engaged in



outdoor activities, with the exception of the area located within 60 feet of the western property line of 1014 W. 31st Street in which outdoor educational or play activities shall be prohibited.

9. The School also agrees that any additional mechanical equipment, including, but not limited to air conditioning equipment, on the Property will be more than 25 feet away from the shared property line between the Property and 1014 W. 31st Street and will be screened. The School agrees that any outside lighting on the Property that is less than 50 feet away from the shared property line between the Property and 1014 W. 31st Street (i) will be hooded and facing down (ii) will produce less than 1 foot candle at any location within such 25 foot area, and (iii) will only be used to the extent such use is appropriate for security purposes.
10. Prior to using the Property as an educational facility, the School shall build and maintain a wall/ fence in the form of a six (6) foot wall/ fence between north property line of 1014 W. 31st Street and the lot to the North of the Property constructed of cement, stone or material reasonably acceptable to the adjacent Neighbors.
11. Notwithstanding anything to the contrary herein, all compatibility standards set forth in the City Code remain applicable and nothing in this Restrictive Covenant shall be deemed to have modified the compatibility standards of the City Code to the extent such compatibility standards may apply to the Property.
12. This Restrictive Covenant and the restrictions, covenants, benefits and obligations created hereby are benefits and servitudes running with the Property and shall inure to the benefit of the Owner, WCNA, the Neighbors as owners of the Benefitted Properties, and their respective heirs, representatives, lessees, successors, and assigns and shall be binding upon the Owner, and its heirs, representatives, lessees, successors and assigns.
13. If any part of this Restrictive Covenant or any of the foregoing covenants is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this Restrictive Covenant, and such remaining portion of this Restrictive Covenant shall remain in full effect.
14. This Restrictive Covenant may be modified, amended, or terminated only by joint written action of (a) WCNA, the Neighbors, and (b) the Owner(s) of the Property, or the portion thereof subject to the modification, amendment or termination, at the time of such modification, amendment or termination.
15. All notices required shall be in writing addressed to the respective parties as set forth below, unless another address shall have been designated by notice to the other parties, and shall be delivered by personal delivery, or by registered or certified mail, to the parties as follows:

If to WCNA, to:

W. 31st Creekside Neighborhood Association  
Attn: Jason Thompkins, President  
1111 West 31st Street  
Austin, TX 78705

with a copy to:

Susan Philips  
P.O. Box 5970  
Austin, TX 78763

If to Owner, to:

Daughters of Charity Health Services of Austin,  
a Texas non-profit corporation

16. Governing Law. The laws of the State of Texas shall govern this Restrictive Covenant. Venue for all purposes shall be Travis County, Texas.

EXECUTED this the \_\_\_\_\_ day of December, 2014 (the "Effective Date").

*[SIGNATURE PAGES FOLLOW]*

OWNER:

DAUGHTERS OF CHARITY MINISTRIES, INC.  
(f/k/a Daughter of Charity Ministries)

By: Daughters of Charity Ministries, Inc. a Missouri  
nonprofit corporation, on behalf of said  
corporation.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF MISSOURI       §  
                                     §  
COUNTY OF ST. LOUIS   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2014, by \_\_\_\_\_, of Daughters of Charity Ministries, Inc. a Missouri  
nonprofit corporation, on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC, State of Missouri

**WEST 31ST STREET CREEKSIDE NEIGHBORHOOD ASSOCIATION**

\_\_\_\_\_  
**Jason Thompkins, President**  
**West 31<sup>st</sup> Street Creekside Neighborhood Association**

STATE OF TEXAS                   §  
  §  
COUNTY OF TRAVIS           §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
2014, by Jason Thompkins.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

\_\_\_\_\_  
**Kimberly Renner**  
**1001 W. 31<sup>st</sup> St., Austin, TX 78705**

STATE OF TEXAS                   §  
  §  
COUNTY OF TRAVIS           §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
2014, by Kimberly Renner.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

Philips 31<sup>st</sup> Street Investments, LLC  
1004, 1006 and 1014 W. 31<sup>st</sup> Street, Austin, TX 78705

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS                   §  
  §  
COUNTY OF TRAVIS           §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Susan Philips, Manager, Philips 31<sup>st</sup> Street Investments, LLC, a Domestic Limited Liability Company.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

Philips Merlin Building, LLC  
1011 W. 31<sup>st</sup> St., Austin, TX 78705

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS                   §  
   §  
COUNTY OF TRAVIS           §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Susan Philips, Manager, Philips Merlin Building, LLC, a Domestic Limited Liability Company.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

\_\_\_\_\_  
Celia Dugger, 1017 W. 31<sup>st</sup> St., Austin, TX 78705  
Trustee of the Jean Sherrill Trust  
149 Pelhamdale Ave  
Pelham, NY 10803

STATE OF NEW YORK           §  
   §  
COUNTY OF \_\_\_\_\_   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Celia Dugger, Trustee, Jean Sherrill Trust.

\_\_\_\_\_  
NOTARY PUBLIC, State of New York

\_\_\_\_\_  
**Fred Meyers**  
**1101 W. 31<sup>st</sup> St., Austin, TX 78705**

STATE OF TEXAS           §  
                                  §  
COUNTY OF TRAVIS      §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2014, by Fred Myers.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

\_\_\_\_\_  
**Jason Thompkins**  
**1111 W. 31<sup>st</sup> St., Austin, TX 78705**

STATE OF TEXAS           §  
                                  §  
COUNTY OF TRAVIS      §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2014, by Jason Thompkins.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

AFTER RECORDING, PLEASE RETURN TO:

Graves Dougherty Hearon Moody  
Attn. Michael J. Whellan  
401 Congress Ave., Ste. 2200  
Austin, Texas 78701

AUS:3836395.8  
57445 4



**CITY OF AUSTIN**  
**Board of Adjustment/Sign Review Board**  
**Decision Sheet**

**DATE:** Monday, December 8, 2014

**CASE NUMBER:** C15-2014-0170

\_\_\_\_ Jeff Jack - Chair  
\_\_\_\_ Michael Von Ohlen  
\_\_\_\_ Melissa Whaley Hawthorne - Vice Chair  
\_\_\_\_ Sallie Burchett  
\_\_\_\_ Ricardo De Camps  
\_\_\_\_ Brian King  
\_\_\_\_ Vincent Harding  
\_\_\_\_ Will Schnier - Alternate  
\_\_\_\_ Stuart Hampton - Alternate

**APPLICANT:** Jeffrey S. Howard

**OWNER:** Daughters of Charity Ministries Inc. and St. Andrew's Episcopal School

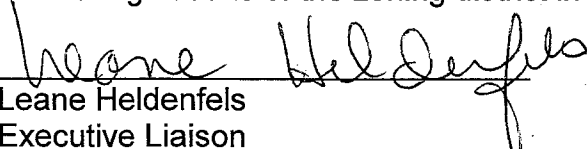
**ADDRESS:** 32<sup>nd</sup> Street and Wabash

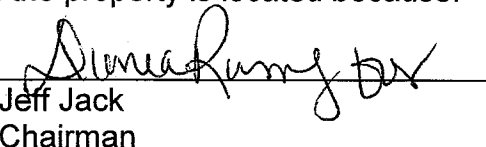
**VARIANCE REQUESTED:** The applicant has requested a variance(s) from Section 25-2-832 (*Private Schools*) (1), of Division 3 – Civic Uses to decrease the minimum paved width of a street that the site must be located on from at least 40 feet from the site to where it connects with another street that has a paved width of at least 40 feet (required) to 22 feet on Wabash Street and from 31 to 36 feet on W. 32<sup>nd</sup> Street (requested) in order to construct a kindergarten facility in a "MF-2-NP", Multi-Family – Neighborhood Plan zoning district. (Windsor Road)

**BOARD'S DECISION:** POSTPONED TO January 12, 2015 BY APPLICANT

**FINDING:**

1. The Zoning regulations applicable to the property do not allow for a reasonable use because:
2. (a) The hardship for which the variance is requested is unique to the property in that:  
  
(b) The hardship is not general to the area in which the property is located because:
3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

  
Leane Heldenfels  
Executive Liaison

  
Jeff Jack  
Chairman

## Heldenfels, Leane

---

**From:** Joyce Basciano <jbasciano@austin.rr.com>  
**Sent:** Monday, December 08, 2014 12:20 PM  
**To:** Heldenfels, Leane  
**Cc:** Ramirez, Diana  
**Subject:** C15-2014-0170, 1112 W. 31st Street  
  
**Importance:** High

Hi Leane,

Please see that the Board of Adjustment receives the following note from the Bryker Woods Neighborhood Association in time for tonight's hearing.

Thank you,

Joyce Basciano

\*\*\*\*\*

Dear Chariman Jack and members of the Board of Adjustment,

Re: C15-2014-0170, 1112 W. 31st Street

The Bryker Woods Neighborhood Association supports the position of the residential property owners on West 31<sup>st</sup> Street regarding this variance request.

Thank you,

Joyce Basciano

On behalf of the Bryker Woods Neighborhood Association

## Heldenfels, Leane

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**From:** Dan Renner <~~dan.renner@pcrllp.com~~>  
**Sent:** Monday, December 01, 2014 2:22 PM  
**To:** Heldenfels, Leane  
**Cc:** jhoward; Randy Erben; Kimberly Renner  
**Subject:** Case Number: C15-2014-0170 32nd & Wabash

Ms. Heldenfels

My wife Kimberly and I own the property at 1001 W. 31st, where our family lives and Kimberly operates a retail home furnishing store. We received the Notice of Public Hearing with regard to the above referenced Case Number.

This email is to advise you that we support the applicant's requested variance. Please place a copy of this email in the application file to reflect our support.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Best,  
Dan

Daniel R. Renner  
Parsley Coffin Renner LLP  
P.O. Box 13366  
Austin, Texas 78711  
512-879-0922 Direct  
[dan.renner@pcrllp.com](mailto:dan.renner@pcrllp.com)

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CASE# C15-2014-0170  
ROW# 11244723  
TAX# 6219010123  
(TRADV)

CITY OF AUSTIN  
APPLICATION TO BOARD OF ADJUSTMENT  
GENERAL VARIANCE/PARKING VARIANCE

**WARNING:** Filing of this appeal stops all affected construction activity.

PLEASE: APPLICATION MUST BE TYPED WITH ALL REQUESTED  
INFORMATION COMPLETED.

STREET ADDRESS: 32nd Street and Wabash

LEGAL DESCRIPTION: Subdivision - See attached Exhibit "A"

Lot(s) \_\_\_\_\_ Block \_\_\_\_\_ Outlot \_\_\_\_\_ Division \_\_\_\_\_

I/We Jeffrey S. Howard ~~on behalf of myself/ourselves~~ as authorized agent for

the Daughters of Charity Ministries, Inc. and St. Andrew's Episcopal School

affirm that on Nov. 5 2014

hereby apply for a hearing before the Board of Adjustment for consideration to:

(check appropriate items below and state what portion of the Land Development  
Code you are seeking a variance from)

\_\_\_ ERECT \_\_\_ ATTACH X COMPLETE \_\_\_ REMODEL \_\_\_ MAINTAIN

Applicant seeks a variance from Section 25-2-832 to allow a private  
school site to be located on a street that has a paved width of less  
than 40 feet.

in a MF-2-NP\* district.

(zoning district) \* Note: A zoning application to LO-MU-CO is currently pending.

NOTE: The Board must determine the existence of, sufficiency of and weight of evidence  
supporting the findings described below. Therefore, you must complete each of the applicable  
Findings Statements as part of your application. Failure to do so may result in your application  
being rejected as incomplete. Please attach any additional support documents.

**VARIANCE FINDINGS: I contend that my entitlement to the requested variance is based on the following findings (see page 5 of application for explanation of findings):**

**REASONABLE USE:**

1. The zoning regulations applicable to the property do not allow for a reasonable use because:

See attached Exhibit "B"

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**HARDSHIP:**

2. (a) The hardship for which the variance is requested is unique to the property in that:

See attached Exhibit "B"

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- (b) The hardship is not general to the area in which the property is located because:

See attached Exhibit "B"

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**AREA CHARACTER:**

3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

See attached Exhibit "B"

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**PARKING:** (Additional criteria for parking variances only.)

Request for a parking variance requires the Board to make additional findings. The Board may grant a variance to a regulation prescribed Section 479 of Chapter 25-6 with respect to the number of off-street parking spaces or loading facilities required if it makes findings of fact that the following additional circumstances also apply:

1. Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonable require strict or literal interpretation and enforcement of the specific regulation because:

N/A

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2. The granting of this variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic of the streets because:

N/A

3. The granting of this variance will not create a safety hazard or any other condition inconsistent with the objectives of this Ordinance because:

N/A

4. The variance will run with the use or uses to which it pertains and shall not run with the site because:

N/A

**NOTE:** The Board cannot grant a variance that would provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.

**APPLICANT CERTIFICATE** – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed *In Hand* Mail Address 901 S. MoPac Expwy.  
City, State & Zip Building II, Ste. 225, Austin, Texas 78746  
Printed Jeffrey S. Howard Phone 512-328-2008 Date 11/5/2014

**OWNERS CERTIFICATE** – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed *Sister Jane Graves* Mail Address 1018 W. 31st Street  
City, State & Zip Austin, Texas 78705  
Printed Daughters of Charity Ministries, Inc. Phone 314-561-4607 Date 11/5/2014

**32<sup>nd</sup> Street & Wabash Variance Request**

**EXHIBIT "A"**  
**Legal Description**

The property that is the subject of this variance request is comprised of two tracts more particularly described as follows:

**Tract One (Daughters of Charity):**

Lot 1-A, Amended Plat of Lots 1 and 2, Block 1, Martha E. Whitten Addition and Lot 1, Seton Medical Center Addition No. 4, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Plat Book 95, Page 344 of the Plat Records of Travis County, Texas.

**Tract Two (St. Andrew's Episcopal School):**

Lot 4, Block 1, Martha E. Whitten Addition, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Plat Book 2, Page 198 of the Plat Records of Travis County, Texas;

Lot 2, Block 1, Seton Medical Center Addition No. 4, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Plat Book 83, Page 143B of the Plat Records of Travis County, Texas; and

Lot 2-A, Amended Plat of Lots 1 and 2, Block 1, Martha E. Whitten Addition and Lot 1, Seton Medical Center Addition No. 4, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Plat Book 95, Page 344 of the Plat Records of Travis County, Texas.

## 32<sup>nd</sup> Street & Wabash Variance Request

### EXHIBIT "B" Findings of Fact

#### 1. Reasonable Use

St. Andrew's School proposes to use the property that is the subject of this variance (which is comprised of both property it currently owns and the adjacent property currently owned by the Daughters of Charity) (the "Site") for private school use, specifically a kindergarten. St. Andrew's has operated a private school (but not a kindergarten) on the property across Wabash Street from the Site and on 31<sup>st</sup> Street for 57 years, since 1957. The school has elected to add a kindergarten in order to enhance its educational programs and mission. However, at this time there is no room on the current Lower School Campus for a kindergarten. The school would, therefore, like to use the Site to locate a kindergarten. It currently owns the majority of the Site which is used as faculty parking. Although the Site is currently used by the school and is part of its campus, it is not currently being used as a private school.

**Using the Site (which is located across Wabash from the school's current lower school campus and is part of the school campus) as kindergarten is a reasonable use of the Site.** However, 31<sup>st</sup> Street, Wabash Street, and 32<sup>nd</sup> Street all have a pavement width of less than 40 feet. The pavement width of 32<sup>nd</sup> Street, which is planned to be the entrance for the kindergarten, is approximately 37 feet. Therefore, Section 25-2-832 of Code, which requires a minimum pavement width of 40 feet, would prevent the reasonable use of the Site by the school for a kindergarten.

#### 2. Hardship

32<sup>nd</sup> Street between Lamar and Wabash is approximately 37 feet in pavement width, just 3 feet short of the requirement in Section 25-2-832. 32<sup>nd</sup> Street is also less 500 feet long from Lamar west to its end at Wabash and is fully developed on both sides of the street. Besides the school parking lot, only 2 other sites (a Randolph Brooks Credit Union and the Seton League House) have access to 32<sup>nd</sup> Street and those other sites also have access directly on Lamar. As a result, 32<sup>nd</sup> Street is very low traffic and a 40 foot pavement width is not necessary to accommodate a small kindergarten. In addition, widening 32<sup>nd</sup> Street to 40 feet all the way to Lamar is not feasible because such widening would require the relocation of underground and overhead utilities and storm inlets and the possible removal of large trees. Such widening would also interfere with the existing driveways and parking lot layouts of the other 2 sites.

**The hardship created by Section 25-2-832 is unique to the property because** (i) 32<sup>nd</sup> Street is already fully developed, (ii) there are existing trees, utilities, storm sewer facilities, driveways and parking areas along 32<sup>nd</sup> Street that would prevent widening without relocation and/ or removal, (iii) this section 32<sup>nd</sup> Street is short with low traffic that is already being utilized by the school which has been in this area for 57 years, (iv) the other sites are not used for school use and are not subject to the requirement, and (v) if the Site were adjacent to the main school campus, a variance would not be needed; however, the Site is separated from the main school campus by the very short Wabash Street.



### **3. Area Character**

The school proposes to use both its existing parking lot on 32<sup>nd</sup> Street (for both parking and drop-off) and the existing Daughters of Charity building on 31<sup>st</sup> Street (for classroom and administrative offices) for the kindergarten. The school has been operating in this area since 1957 and is currently using a majority of the Site as part of its campus, even though instruction is not currently occurring on the Site. As a result, use of the Site by the school for kindergarten does not alter the character of the area. In fact, the use of Site for private school use instead of some other use that does not have to comply with 25-2-832 actually preserves the character of the area.

In addition, use of the Site for private school use will not impair the adjacent credit union because it has access on Lamar and the additional traffic created by the kindergarten on 32<sup>nd</sup> street will be minimal. The adjacent tract on 31<sup>st</sup> street will also not be impaired because the school proposes to prohibit access from the Site to 31<sup>st</sup> street, directing traffic instead to 32<sup>nd</sup> street.

Finally, the use of the Site as a private school will not impair the purposes of the regulations of the zoning district in which the property is located. Section 25-3-832 does not involve site development regulations applicable to a particular zoning district. None of the zoning districts applicable to the Property require a minimum street pavement width. In addition, the minimum pavement width in Section 25-2-832 does not apply to or prevent the other commercial and residential uses that are both in the area and allowed by the zoning district. Therefore, granting a variance from 25-2-832 in this case will not impair the purposes of these zoning districts.

Bldg. Opt In/Opt Out Process			
C14-00-2075; Wabash Parking Lot Improvements - West 32 <sup>nd</sup> Street at Wabash Avenue	GO-CO to GR-CO	To grant GR with a parking lot as the only permitted GR use and all permitted LO uses intact (05/09/2000)	Approved GR-CO zoning, with the CO deleting prohibition of private primary and secondary education facilities (06/01/2000).
C14-98-0256; Wabash Parking Lot Improvements, 1019 West 32 <sup>nd</sup> Street	SF-3, MF-2 to GO-CO	To grant GO-CO w/conditions (08/24/1999).	Approved GO-CO w/conditions; 40ft height restriction, and a list of prohibited GO uses (09/30/1999).

#### **RELATED CASES:**

The subject property includes a 3,137sq.ft. piece of land that is not part of the zoning change requested in this application. This piece of the property was originally zoned SF-3 and was rezoned to GO-CO in 1999 and then from GO-CO to GR-CO to allow for primary and secondary educational facilities in 2000 (C14-98-0256 and C14-00-2075).

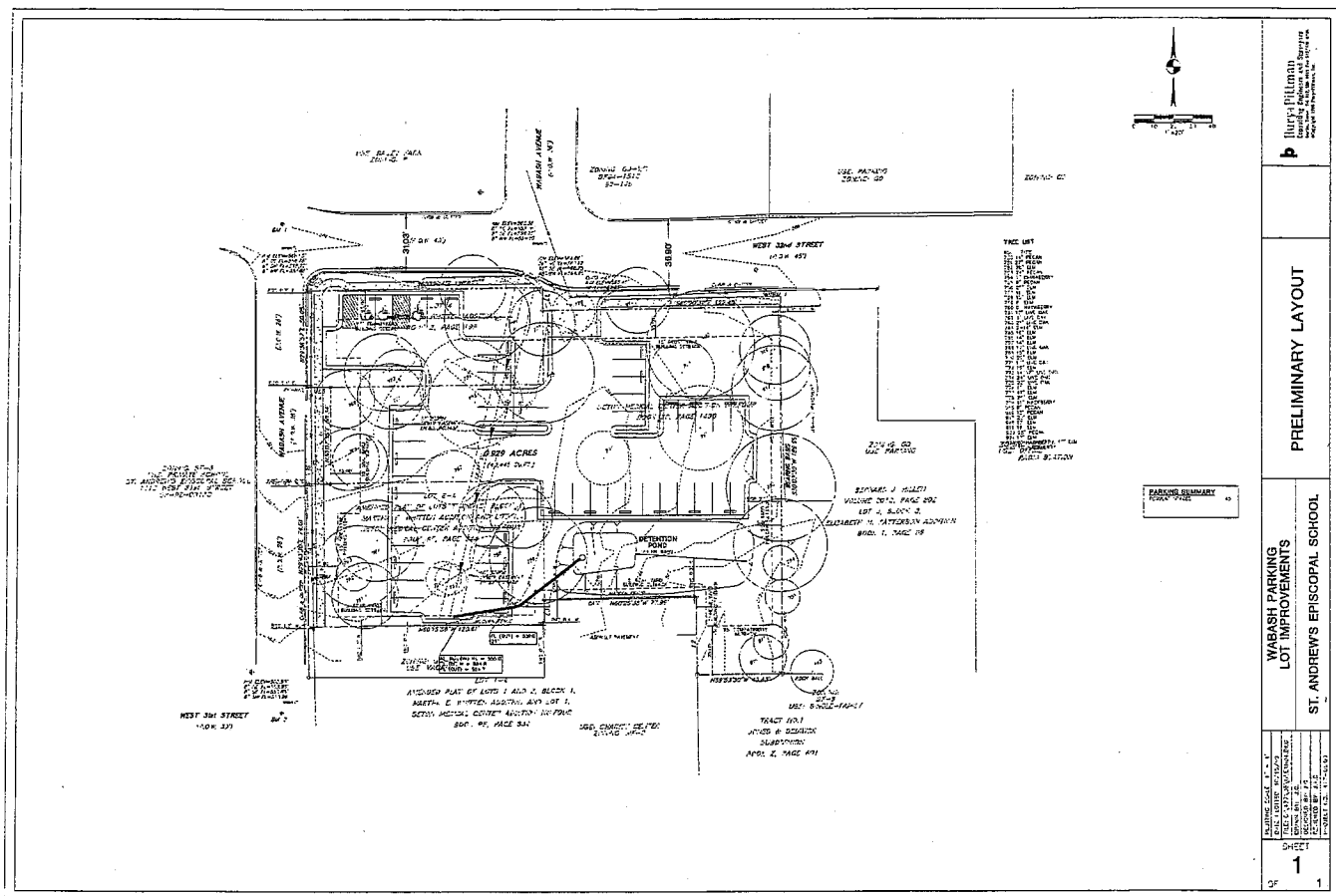
The subject property is within the boundaries of the Central West Austin Neighborhood Planning Area (NP-2010-0027, Ord. No. 20100923-102). The -NP combining district was appended to the existing MF-2 base district in 2010 (C14-2010-0051, Ord. No. 20100923-103).

There is a corresponding neighborhood plan amendment case (NPA-2014-0027.02) to change the land use designation on the Future Land Use Map (FLUM) from Multifamily to Mixed Use/Office.

#### **ABUTTING STREETS:**

Name	ROW	Pavement	Classification	Sidewalks	Bike Route	Capital Metro (within 1/4 mile)
W. 31 <sup>st</sup> St.	55'	27'	Local	Yes	Yes	Yes
Wabash	25'	24'	Local	Yes	No	Yes

According to the Austin 2009 Bicycle Plan Update approved by Austin City Council in June, 2009, a bicycle facility is not identified on Wabash Street.



**Bury Pittman**  
 Surveyors  
 1000 N. 1st St., Suite 100  
 St. Paul, MN 55101  
 Phone: 612-222-1111  
 Fax: 612-222-1112

# PRELIMINARY LAYOUT

**WABASH PARKING LOT IMPROVEMENTS**  
**ST. ANDREW'S EPISCOPAL SCHOOL**

DATE: 10-1-11  
 SCALE: 1" = 40'-0"  
 SHEET: 1  
 OF: 1

## Heldenfels, Leane

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**From:** Emily Blanco <[REDACTED]>  
**Sent:** Monday, December 15, 2014 2:35 PM  
**To:** Heldenfels, Leane  
**Subject:** RE: BOA Variance Application Case C15-2014-0170  
**Attachments:** BOA Variance Exhibit A.docx

According to Austin GIS, the addresses appear to be: 1018 W. 31<sup>st</sup> Street, 1011 W. 32<sup>nd</sup> Street and 1019 W. 32<sup>nd</sup> Street. See attached Exhibit A for Lot/Blocks.

I am working on the site plan that shows paved widths of all the streets. You said in the last email to use the attached updated first page to resubmit, but nothing came through—do you mind sending that?

### Emily Blanco

Legal Secretary

[REDACTED]

Barton Oaks Plaza, Building II  
901 South MoPac Expy | Ste 225  
Austin, Texas 78746  
512.328.2008 phone  
512.328.2409 fax  
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**From:** Heldenfels, Leane [mailto:Leane.Heldenfels@austintexas.gov]  
**Sent:** Wednesday, December 10, 2014 10:45 AM  
**To:** Emily Blanco  
**Subject:** RE: BOA Variance Application Case C15-2014-0170

Can you provide me the legal addresses/subdivision lot and blocks and address you'd like the case to be noticed as. I've added the 4 parcels to our case so I think the map, labels will be correct this time but just want to make sure the description is correct, too – I'll have you/Jeff review before they get mailed this time.  
If you want to send an updated 1<sup>st</sup> page for the application (you can use attached) and site plan that shows paved widths of all the streets the tracts front to and intersect with that would be helpful, too, so the body of the notice is accurate as well – hate for it to get postponed again if we can avoid it.  
Thanks –  
Leane

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**From:** Emily Blanco [mailto:[REDACTED]]  
**Sent:** Tuesday, December 02, 2014 10:42 AM  
**To:** Heldenfels, Leane  
**Subject:** RE: BOA Variance Application Case C15-2014-0170

214685 24

